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APR 8 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

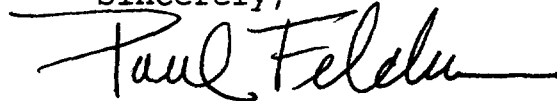
Re: MD Docket No. 94-19

Dear Mr. Caton:

Enclosed, on behalf of Nationwide Communications Inc., owner/operator of multiple small cable systems in Houston, Texas, is an original and 4 copies of its *Comments*, in the above-captioned proceeding.

Please contact the undersigned counsel if you have any questions regarding this matter.

Sincerely,



Paul J. Feldman  
Counsel for  
Nationwide Communications Inc.

PF:ik  
Enclosure

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

**RECEIVED**

**'APR 8 1994**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Implementation of Section 9 of )  
the Communications Act )

Assessment and Collection of )  
Regulatory Fees )

MD Docket No. 94-19

To: The Commission

**COMMENTS OF NATIONWIDE COMMUNICATIONS INC.**

Nationwide Communications Inc. ("NCI"), by its attorneys, hereby files its comments in response to the *Notice of Proposed Rule Making*, released March 11, 1994, in the above-captioned proceeding (the "Notice").<sup>1</sup>

NCI is the owner and operator of small cable systems serving Houston, Texas. These systems are not "traditional" cable systems, but rather provide multi-channel video service solely to multiple dwelling units through a hybrid of master antenna television systems, satellite master antenna television systems, and community antenna television systems. NCI has 22 cable systems in the Houston area.<sup>2</sup> 18 of these systems have less than 300 subscribers.

<sup>1</sup> Comments in this proceeding were due April 7, 1994. NCI hereby seeks leave to file these Comments one day late. Acceptance of these Comments will serve the public interest by adding to the record in this proceeding. The one day will not delay the proceeding or prejudice any other commenters.

<sup>2</sup> Some of the 22 cable systems include multiple complexes interconnected to one headend, and thus constitute one discrete interconnected system. Some of the interconnected complexes have

NCI recognizes that the goal of the legislation underlying this proceeding<sup>3</sup> was to make "users" of FCC services pay for the Commission enforcement, policy and rulemaking, and information provision services associated with the user's commercial activities.<sup>4</sup> However, in promulgating the rules, the Commission must not excessively burden users sought to be protected by Congress, specifically, small cable systems. Accordingly, in creating regulatory fees for cable systems, the Commission:

1. should not apply fees to systems with under 1,000 subscribers, or should pro-rate fees on a per-subscriber basis for such systems; and
2. should define a "system" as all cable operations connected to one headend, regardless of the number of "community units" each such system includes.

**I. Congress' Goals in the 1993 Budget Act, and in Regulating Small Cable Operators.**

In the legislative history to the Section 6003 of the 1993 Budget Act, Congress stated that the purpose of the fees was to

recover for the Commission the costs of enforcement, policy and rulemaking, international coordination and user information services ...<sup>5</sup>

However, Congress also recognized that in enacting rules to charge the required fees, the Commission should ensure that the fees are

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retained their separate community unit numbers, given to those complexes prior to their interconnection into larger cable systems. Accordingly, the 22 cable systems include 72 properties with separate community unit numbers.

<sup>3</sup> Section 9(a) of the Communications Act, which was added pursuant to Section 6003(a) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 397 (August 10, 1993) (hereinafter the "1993 Budget Act").

<sup>4</sup> See, H.R. Rep. No. 213, 103d Cong., 1st Sess. 499 (hereinafter the "Conference Report").

<sup>5</sup> Id.

"reasonably related to the benefits provided to the payor of the fee...."<sup>6</sup> Furthermore, Congress stated that the provisions of Section 6003 (other than the specific amounts of the fees) are identical to those contained in H.R. 1674, and that the House Report for H.R. 1674 is incorporated by reference into the legislative history of Section 6003.<sup>7</sup>

A review of the House Report reveals that Congress specifically sought to establish, in the creation of a fee structure, "a clear[] distinction between small and large users" within a particular industry.<sup>8</sup> Furthermore, Congress was aware of the need to not overly burden small cable operators, and made special provisions for pro-rating the fees paid for systems with less than 1,000 subscribers.<sup>9</sup>

In addition to the specific recognition of the need to relieve the burdens on small operators stated in H.R. 1674, Congress expressed a similar concern in the more recent Cable Television Consumer Protection and Competition Act of 1992. Specifically, while that Act amended Section 623 of the Communications Act to establish a rate regulation regime, Section 623(i) required the Commission to design rate regulations that "reduce the administrative burdens and cost of compliance on cable systems that have 1,000 or fewer subscribers."

In light of the above-cited Congressional intent to limit the impact of regulatory fees on small users in general, and regulatory

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* citing H.R. Rep. No. 207, 102nd Cong., 1st Sess. 11 (1991) (hereinafter the "House Report"). See also Notice at note 28.

<sup>8</sup> House Report at 16.

<sup>9</sup> *Id.* at 23-24.

fees and burdens on small cable operators specifically, the Commission must fashion its rules in a manner consistent with that intent. A provision exempting small cable operators, or pro-rating regulatory fees, would accomplish that requirement.

**II. Small Cable Systems Should be Exempted, or Should Have Their Fees Pro-Rated.**

The Commission proposes, in paragraph 75 of the Notice, to assess \$370 per 1,000 subscribers on each cable system, and to assess a flat fee of \$370 on smaller systems with less than 1,000 subscribers. The Commission supports this proposal by stating that

[a]lthough the statutory schedule indicates that cable systems are to be assessed regulatory fees for every 1,000 subscribers, we do not believe that Congress intended to completely exempt small systems with less than 1,000 subscribers.

To the extent that Congressional intent is not clear on this matter, NCI asserts that the Commission has the discretion to exempt small systems (those with less than 1,000 subscribers). Such an action would be consistent with other Commission rules relieving small operators of certain regulatory burdens.<sup>10</sup> However, at the very least, the Commission should pro-rate the application of the fees to systems with less than 1,000 subscribers. For example, a system with 500 subscribers would have to pay only \$185. Such a provision is not only consistent with the language of Section 6003, it was specifically suggested in the legislative history of that Section (i.e., the House Report at 23-24).

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<sup>10</sup> See, e.g., *Cable Ownership and Anti-Trafficking Report and Order*, 8 FCC Rcd 6828 (1993) at para. 90 (blanket waiver from anti-trafficking rules for systems serving less than 1,000 subscribers); Section 76.605, note 1, and 76.601(e) of the Commission's rules (less stringent technical testing standards for systems with less than 1,000 subscribers); *Rate Regulation, Second Reconsideration Order*, FCC 94-38 (released March 30, 1994) at para. 216 (streamlined rate reductions for systems averaging 1,000 or fewer subscribers); and Section 76.95 (exemption from network non-duplication rules).

**III. The Definition of a Cable System Should Include  
All Operations Interconnected to One Headend.**

Paragraph 75 of the Notice states that the regulatory fee will be assessed on "each cable television system, as that term is defined in section 76.5 of our rules...." That section of the rules defines a cable TV system as a "... facility consisting of a set of closed transmission paths and associated generation, reception and control equipment...." A "set of closed transmissions paths" should be interpreted to mean that all operations technically integrated into one cable headend constitute one cable system for the purposes of assessing regulatory fees.<sup>11</sup> Thus, if multiple "community units" are interconnected into one headend, these facilities should still be considered to be one cable system. This interpretation is not only consistent with the definition of a system for other Commission rules, it makes practical sense, and would reduce the paper work and administrative burden upon the Commission.<sup>12</sup>

First, this interpretation reflects the fact that "cable systems", as actually run by cable operators, are those facilities

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<sup>11</sup> Of course, pursuant to Section 76.5(a)(2) of the rules, the definition of a cable system for the purpose of regulatory fees should not include SMATVs, that is, facilities "that serve only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right of way."

<sup>12</sup> NCI recognizes that the House Report gives (at page 23), as an "example" a cable system payee, a community unit ("OH1969"). However, one can reasonably assume that in enacting regulatory fees for cable systems, Congress was generally thinking of ordinary wired cable systems where all of the facilities interconnected to one headend are generally included in one community unit. However, there are many operators of "cable systems" like NCI, that provide service to numerous multiple dwelling units, each of which had an individual community unit number prior to integration into a unified system interconnected to one headend. Because such systems are not the type generally thought of as cable systems, the reference to community unit in the House Report should not be determinative of the Commission's definition of a system for the purposes of regulatory fees.

that are interconnected into one headend.<sup>13</sup> Furthermore, consistent with the goals of Section 6003 to recover the costs of regulation, any regulatory action based on individual community units (registrations and petitions for special relief regarding carriage of broadcast stations) are accompanied by filing fees, which are designed to cover the costs of providing those services by the Commission.

Lastly, the interpretation of a "closed system" as all cable operations interconnected to one headend is consistent with the definition of system for other Commission rules. For example, in its initial rate regulation order, the Commission determined the size of a small system by consideration of a system's principal headend, including other facilities and receive sites that are technically integrated into the headend. *Rate Regulation Report and Order*, 8 FCC Rcd 5631 (1993) at para. 465; *affirmed*, *Rate Regulation, Second Reconsideration Order*, FCC 94-38, at para. 227. Similarly, in its *Cable Technical Standards Reconsideration Order*, the Commission relieved burdens on cable operators by required that proof-of-performance testing be done on a system-wide basis, defining systems as technically integrated facilities. 7 FCC Rcd 8676 (1992) at para. 17.

#### IV. Conclusion

While recognizing the goal of making users of Commission services pay for those services, NCI asserts that the Commission must enact rules consistent with Congressional intent to relieve the burdens that excessive fees would place on small cable TV system

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<sup>13</sup> For example, as was noted above, while NCI serves multiple dwelling units that were individually registered, and thus have individual community unit numbers, as those dwellings have been integrated, they are operated as one integrated system, not individual community units.

operators. The Commission should exempt or pro-rate fees for systems with less than 1,000 subscribers. Furthermore, the Commission should interpret the definition of a cable system (a set of closed transmission paths) to mean all operations interconnected to one headend, regardless of whether or not it includes multiple "community units." The result would be consistent with the definition of a system for other Commission rules, would make practical sense, and would reduce the administrative burden upon the Commission.

Respectfully submitted,

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By:



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April 8, 1994

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